IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
GENERAL CHANCERY SECTION

KIMBERLY MARSHALL, Plaintiff, v. POLICE BOARD OF CITY OF CHICAGO, ET AL., Defendants.	No. 09 L 51839 Honorable Franklin U. Valderrama

MEMORANDUM OPINOIN AND ORDER

This matter comes to be heard on Plaintiff, Kimberly Marshall's, Complaint for Administrative Review. For the reasons that follow, the Board's decision is reversed and the matter is remanded for consideration of an alternative sanction to discharge.

BACKGROUND

Plaintiff, Kimberly Marshall ("Marshall") is a former Chicago Police Officer. As of May 31, 2005, Marshall was a police officer for fifteen (15) years (R. 28). As of that date, Marshall lived with her son, Hoyle David Marshall ("Hoyle"). (R. 314). Additionally, as of that date, Marshall owned a 2000 Hyundai SUV, which she kept in her neighbor, Cynthia Smith's ("Smith"), garage. (R. 315). On the evening of May 31, 2005, Marshall was awakened by Smith and informed that her car was missing from the garage. (R. 316). Marshall searched her purse for her car keys but they were not there. (R. 316). Marshall immediately suspected that her son had taken the car. (R. 316). Marshall called the police and reported her car missing and reported that she believed that her son was joy riding in her vehicle. (R. 316). Marshall's son did not have a driver's license. (R. 317).

Later that evening, Marshall's son called her and stated that he was involved in a car accident. (R. 317-18). Marshall drove to the accident scene and saw her car on top of another car. (R. 318). There were numerous individuals at the scene, but the police, according to Marshall were not there when she arrived. (R. 318). Marshall tried to start the car but it would not start. (R. 318).

Officer Buckley and Officer Elliot arrived at the scene to investigate the accident. (R. 75). Upon arriving, Officer Buckley saw that there were three cars that were apparently involved in the automobile accident. (R. 76). Officer Buckley saw a small SUV attempt to drive off. (R. 78). Officer Buckley, however, blocked the SUV's path with his squad car. (R. 78). Officer Buckley saw Marshall in the driver's seat of the SUV. (R. 79). Officer Buckley also saw Hoyle

in the SUV. (R.79). Bystanders informed Officer Buckley that Hoyle struck the other vehicles. (R. 79-80). Hoyle told Officer Buckley that he did not have a driver's license. (R. 81). Officer Buckley asked Hoyle to exit the car, which he did. (R. 82). Officer Buckley then placed Hoyle in handcuffs. (R. 82).

At some point during the investigation, an altercation ensued between Marshall, Officer Buckley and Officer Elliott, leading to Marshall's arrest. The alleged actions that led to Marshall's arrest include: initiating a struggle with an officer, biting an officer, interfering with the arrest of her son, cursing at an officer, and making false allegations to the police. Marshall was charged with three criminal counts, two counts of battery and one count of obstruction of justice. (R. 352). The case proceeded to jury trial and Marshall was found guilty of the charges. (R. 352).

The Police Board subsequently filed a complaint against Marshall, in which she was charged with violating the following rules of the department: Violation of any law or ordinance; any action or conduct, which impedes the Department's efforts to achieve its policy and goal or brings discredit upon the Department; disobedience of an order, directive, whether written or oral; disrespect to or maltreatment of any person, while on or off duty; engaging in any unjustified physical or verbal altercation with any person, while on or off duty; and making a false report, written or oral.

The Police Board determined that Marshall was guilty of violating the rules as charged. As a result of the Police Board's determination, six (6) of the members determined that Marshall should be discharged from her position as a police officer with the Department of Police and from the services of the City of Chicago, while one (1) member of the Police Board dissented from the majority, voting for a penalty of less than discharge.

Marshall subsequently filed a Complaint for Administrative Review. Marshall alleges that the Board's decision to discharge her as a police officer was a harsh and severe penalty in light of her years of employment and minimum disciplinary history. Marshall cites Massingale v. Police Bd. of the City of Chicago, 140 Ill. App. 3d, 378 (1st Dist. 1986), Kreiser v. Police Bd. City of Chicago, 69 Ill. 2d 511 (1977), and Kirsch v. Rochford, 55 Ill. App. 3d 1042, (1st Dist. 1977), in support of her proposition. Marshall contends that like in the above mentioned cases, the sanction imposed against her was too harsh. As such, Marshall maintains that this Court should reverse and remand this cause to the Police Board for further considerations for the imposition of a lesser and more appropriate penalty, instead of discharge.

Defendants, on the other hand, allege that the sanction imposed on Marshall is not arbitrary, unreasonable or unrelated to the needs of the service. According to Defendants, the question the before the Court is whether the Board's sanction of discharge was unreasonable, arbitrary or a type of discipline unrelated to the needs of service, citing Launius v. Bd. of Fire & Police Comm'rs, 151 Ill. 2d 419, 426 (1992). Defendants assert that the cases cited by Marshall are all distinguishable. First, according to Defendants, Kreiser is distinguishable from this case because the plaintiff in Kreiser, was found guilty of a single incident misconduct, while Marshall was found guilty of violating numerous rules of the Department. Defendants also contend that the cases cited by Marshall are distinguishable as they were decided prior to Launius and

therefore employ an outdated standard. Defendants maintain that courts, in determining whether a sanction is appropriate, must consider whether it is arbitrary, unreasonable or unrelated to the needs of service rather than considering whether the sanction is "too harsh." Defendants, therefore argue that since Kreiser, Kirsch, and Massingale were all decided prior to Launius, those cases are distinguishable from this case.

ADMINISTRATIVE REVIEW STANDARD

On administrative review, the standard of review applied by the trial court depends on the issue presented on review. Express Valet Inc. v. City of Chicago, 373 Ill. App. 3d 838 (1st Dist. 2007). There are three types of questions that courts may encounter on administrative review of an agency's decision: (1) questions of fact, (2) questions of law, and (3) mixed questions of fact and law. Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd., 228 Ill. 2d 200, 210 (2008).

Where the question of an agency's decision is one of fact, an administrative agency's findings and conclusions of fact are deemed to be prima facie true and correct. 735 ILCS 5/3-110 (West 2008); O'Boyle v. Personnel Bd. of Chicago, 119 Ill. App. 3d 648, 653 (1st. Dist. 1983). In examining an administrative agency's factual findings, a reviewing court does not weigh the evidence or substitute its judgment for that of the agency. Cinkus, 228 Ill. 2d at 210. "If the issue before the reviewing court is merely one of conflicting testimony and credibility of witnesses, the administrative board's decision should be sustained." O'Boyle, 119 Ill. App. 3d at 653. Instead, a reviewing court is limited to ascertaining whether such findings of fact are against the manifest weight of the evidence. Belvidere v. Ill. State Labor Relations Bd., 181 Ill. 2d 191, 204 (1998). An administrative agency's factual findings are against the manifest weight of the evidence if no trier of fact could have agreed with the agency or an opposite conclusion than that reached by the agency is clearly evident. Wade v. City of North Chicago Police Pension Bd., 226 Ill. 2d 485, 505 (2007).

The scope of review of an administrative agency's decision regarding discharge requires a two-step analysis. Krocka v. Police Bd. of the City of Chicago, 327 Ill. App. 3d 36, 46 (1st Dist. 2001). First, a court must determine whether the agency's findings are contrary to the manifest weight of the evidence. Id. Second, the reviewing court must determine whether the findings of fact provide a sufficient basis for the agency's conclusion that cause for discharge does or does not exist. Id. As such, the agency's decision as to cause will not be reversed unless it is arbitrary, unreasonable, or unrelated to the requirements of service. Id.

DISCUSSION

Marshall does not dispute the Board's finding of guilt, therefore the only issue before this Court is whether the penalty imposed on Marshall for her violations of the Rules and Regulations of the CPD, was unreasonable, arbitrary or unrelated to the requirements of service. In other words, the Court must determine whether the findings of fact provide a sufficient basis for the agency's conclusion that cause for discharge does exist. The Board's determination will not be reversed unless it is found to be arbitrary, unreasonable, or unrelated to the requirements of service. Krocka, 327 Ill. App. 3d at 46. As the reviewing court, this Court may not consider

whether it would have imposed a more lenient penalty. Wilson v. Board of Fire & Police Commissioners, 205 Ill. App. 3d 984, 992 (1990).

The Board has "considerable latitude" and "considerable discretion" in determining what constitutes cause for discharge. Krocka, 327 Ill. App. 3d at 46. "Cause" for discharge has been judicially defined as "some substantial shortcoming which renders the employee's continuance in office in some way detrimental to the discipline and efficiency of the service and which the law and sound public opinion recognize as good cause for his no longer holding the position." Id., citing Kappel v. Police Board, 220 Ill. App. 3d 580, 589 (1991).

Marshall relies on several cases in support of her contention that the sanction of discharge is "too harsh," including Massingale v. Police Bd., 140 Ill. App. 3d 378 (1st Dist. 1986). In Massingale, the plaintiff, a Chicago police officer was discharged following a guilty plea to reckless driving of an automobile while off duty. Id. at 379. The superintendent filed charges against the plaintiff, which included driving intoxicated while off duty and giving false information during an official investigation. Id. The Board entered a finding of guilty on the charges and entered a sanction, discharging the plaintiff from the police department. Id. The plaintiff filed a complaint for administrative review. Id. The plaintiff argued that her discharge was an improper sanction on the basis of her plea to a charge of reckless driving while she was off duty. Id. at 381. The trial court found the discharge sanction was unwarranted. Id. at 382. The court noted that the plaintiff's DUI was her only violation of the department's rules and regulations. Id. The court also observed that the plaintiff had been a member of the police department for seven years and that she was not on duty at the time of the incident. Id.

Marshall also cites Kreiser v. Police Bd. of City of Chicago, 69 Ill. 2d 27 (1977). In Kreiser, the plaintiff was cited for driving his personal vehicle, off duty while in uniform. Kreiser, 69 Ill. 2d at 29. The plaintiff's vehicle did not have a city sticker affixed in its windshield and did not have a front license plate. Id. The plaintiff was charged with violating Rule 2 of the department in five respects. Id. As a result the plaintiff was discharged. Id. at 28. The plaintiff filed a complaint for administrative review. Id. The trial court sustained the Board's findings and the plaintiff appealed. Id. The appellate court reversed the trial court's ruling, finding that the Board's findings did not constitute "cause" for discharge. Id. The appellate court found that the plaintiff's infractions were not sufficiently substantial or related to the performance of the plaintiff's duties to call for the maximum sanction of discharge. Id. at 30. The defendants appealed and the Illinois Supreme Court affirmed the decision of the appellate court but reversed the cause for reconsideration of the appropriate sanction. Id.

Marshall further cites Kirsch v. Rochord, 55 Ill. App. 3d 1042 (1st Dist. 1977). In Kirsch, the plaintiff, an off duty police officer, was intoxicated while at the airport. Id. at 1044. The plaintiff attempted to board the plane; however, the ticket agent believed that plaintiff was intoxicated and refused to allow him to board. Id. The plaintiff became belligerent, shouting profanities and was arrested. Id. At the police station, the plaintiff continued to be uncommunicative, belligerent and appeared to be under the influence of alcohol or drugs. Id. at 1045. The Board found the plaintiff guilty of violating three department rules. Id. at 1044. The plaintiff filed a complaint for administrative review, arguing, amongst other things, that his conduct did not warrant a penalty as severe as discharge. Id. at 1046. The appellate court agreed

with the plaintiff and reversed the Board's decision. Id. The court found that the maximum sanction of discharge was unwarranted. Id. The court noted that the plaintiff was intoxicated at the time and that that his conduct was the cause of the disturbance both at the airport and the police station. Id. However, the court observed that the plaintiff was not on duty at the time of the incident, was a member of the police department for a number of years and that no material aggravation was introduced into the record. Id. The court noted that while the charges were not unreasonable or arbitrary, the case should be remanded so that the Board can consider an alternative sanction to that of discharge. Id.

The Defendants on the other hand, argue that whether a Board's sanctions are "too harsh" is no longer the barometer that reviewing courts should use, citing Launius, 151 Ill. 2d 419, 426 (1992), in support of their proposition. In Launius, the plaintiff was discharged from his position after leaving work during a city-wide emergency before his shift ended. Id. at 423. The hearing board found the plaintiff guilty of violating several rules. As a result of the Board's findings, the plaintiff was discharged. Id. The plaintiff filed a complaint for administrative review, arguing that the sanction imposed was improper. The trial court affirmed the Board's decision and the appellate court reversed, concluding that the Board's findings were against the manifest weight of the evidence. Id. at 427. The court also found that the Board's decision was not related to the requirements of service because the plaintiff's conduct did not reflect a flaw in integrity or character, but rather, he left when other officers were present and was concerned for the safety of his wife and small children. Id. at 435.

The Illinois Supreme Court reversed the appellate court, and affirmed the trial court's decision. Id. On the issue of discharge as a sanction, the Court noted that the standard is whether, in view of the circumstances presented, a court can say that the Board, in opting for discharge acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of service. Id. at 436. Applying that standard, the Court found that the sanction was appropriate. Id. The Court observed that the plaintiff was at his post; was denied permission to leave, but left anyway; was out of contact with the department for approximately a twelve-hour (12) period; and did not return to duty. Id. at 443. The Court further noted that the plaintiff was not unable to return to the station after reaching his home, yet failed to do so. Id. 444. The Board, observed the Court, found that the plaintiff abandoned his post. Id.

This Court finds Launius distinguishable from the case at hand. As noted, the officer in Launius, while on duty left his post during an emergency to check on the well-being of his family, after being denied permission to do so. The court found that under such circumstances, the sanction of discharge was not arbitrary, unreasonable or unrelated to the requirements of service. Launius, contrary to Defendants' suggestion, did not overrule Massingale, Kreiser, or Kirsch.

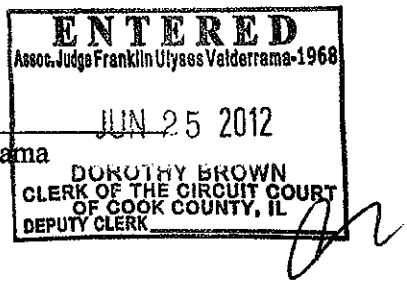
In the case at bar, Marshall had been a member of the CPD for approximately fifteen (15) years and was not on duty at the time of the incident. The issue is not whether this Court would impose a less severe penalty, but rather, whether the discharge was arbitrary, unreasonable, or unrelated to the requirements of service. This Court finds that, in light of Massingale, Kreiser, and Kirsch, the sanction of discharge is unreasonable in this case. This is not to say that the Court condones Marshall's conduct, or that she should not be disciplined for such unprofessional

behavior. However, the loss of a job is both a harsh discipline and a severe sanction. Accordingly, in light of the prevailing case law on this matter, the Court finds the sanction of discharge unreasonable. As such, this matter is remanded so that the Board can consider an alternative sanction to that of discharge.

CONCLUSION

In sum, for all of the foregoing reasons, the Board's decision is reversed and this matter is remanded to the Police Board for an alternative sanction to that of discharge.

ENTERED:



Franklin U. Valderrama
Judge Presiding

June 25, 2012

Order 9216 8001 - 4304 (2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Kimberly Marshall

v.

No. 09 L 51839

Chicago Police Board, City of Chicago, et. al

ORDER

This cause coming on to be heard for this Court's ruling on Plaintiff's Petition for Administrative Relief, the parties are present in open court, the Court has jurisdiction and the Court is advised in the premises; It Is Hereby Ordered that the Matter is remanded back to the Police Board for further Consideration on the appropriate penalty or Sanction in this case, and the Court further rules in favor of Plaintiff's petition for relief. This Case is off this Courts Call.

Atty. No.: 11993

Name: Gwendolyn D Anderson

Atty. for: Plaintiff

Address: 6727 South Euclid

City/State/Zip: Chicago, IL 60649

Telephone: 773 578-5506

ENTERED: ENTERED
Assoc. Judge Franklin Ulyses Valderrama-1968
JUN 25 2012
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Dated:

Judge

Judge's No.

S.T.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Kimberly Marshall

v.

No. 2009 L 051839

Garry F. McCarthy, et. al.

ORDER

This matter, coming to be heard on Defendant Superintendent Garry F. McCarthy's Motion for Entry of a Final Order, counsel for both parties present and the Court being fully advised, it is hereby ordered:

The Police Board has complied with the Court's June 25, 2012 order, This matter is final and appealable and dismissed from this court.

Atty. No.: 90909
Name: Kathleen Flaherty
Atty. for: Defendant McCarthy
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City/State/Zip: Chicago, IL 60602
Telephone: (312) 744-6909

ENTERED:

ENTERED
Assoc. Judge Franklin Ulyses Valderrama-1968
DEC 17 2012
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL
DEPUTY CLERK

Judge Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS